

REMARKS

STATUS OF THE CLAIMS

Claims 8 and 11-13 were pending and at issue. Claims 1-3 and 16-17 were previously canceled. Claims 4-7 were previously withdrawn with the possibility of rejoinder as being drawn to method claims dependent on pending composition claim 8. Claims 9, 10, 14 and 15 were previously withdrawn as drawn to non-elected sequences with the possibility of rejoinder should generic claim 8 be found to be allowable. Claims 4, 8, 9, 10, 11, and 14 have been amended herein. Claim 12 has been canceled.

SUPPORT FOR THE AMENDMENTS TO THE CLAIMS

The claims have been amended to replace the language “A composition comprising a first isolated polynucleotide and a second isolated polynucleotide ...” with the language “A set of polynucleotides comprising a first isolated polynucleotide and a second isolated polynucleotide ...” Support for the amendments can be found throughout the specification as filed, e.g., at paragraph [0017].

Claims 11 and 14 have been amended to incorporate elements from claim 12, “wherein said set consists of forward primers and reverse primers and hybridization probes.” Support can be found throughout the specification as filed, e.g., paragraphs [0016] though [0019].

REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 8 and 11-13 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner stated that

The newly amended claim(s) contain subject matter that changes the scope of the claim and is not supported in the specification and raises issues of new matter.

Upon review of the specification, the specification does not appear to provide support for the recitation of “consists of SEQ ID No. 4 or the complement thereof and the second polynucleotide consists of SEQ ID No. 8 or the complement thereof”. The specification does not appear to teach a composition that comprises two isolated polynucleotides that consists of SEQ ID NO. 4 and 8.

Without agreeing with the Examiner's position but rather to further prosecution, Applicant has amended the claims to recite "a set of polynucleotides" rather than "a composition." Applicant notes that at paragraph [0017], the specification describes using PCR to determine the presence of SEQ ID NO:4 and SEQ ID NO:8, e.g., using PCR to amplify the sequences resulting in a set of two isolated polynucleotides.

The rejection is moot as drawn to the amended claims and Applicant requests withdrawal of this rejection.

The Examiner also stated that

Claim 11 was amended to "fragments are 19 to 32 nucleotides in length"(amended 412612007). This recitations is not supported in the specification and raises the issue of new matter.

Claim 13 is rejected as it depends from the rejection Claim 11.

Without agreeing with the Examiner, Applicant has amended claim 11 to recite "wherein said set consists of forward primers and reverse primers and hybridization probes;" claim 11 no longer recites a size range. Applicant notes that the Examiner correctly did not make a written description rejection regarding this language in formerly presented claim 12. Paragraphs [0006] to [0008] clearly describe the claimed invention as including the SEQ ID NO: of the disclosed nucleotide sequences specific to Brucella and "any primers that are derived from these nucleotides sequences" or "any probes that are derived from these nucleotides sequences."

Applicant notes that what is conventional or well known to one of ordinary skill in the art need not be disclosed in detail. See Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d at 1384, 231 USPQ at 94. >See also Capon v. Eshhar, 418 F.3d 1349, 1357, 76 USPQ2d 1078, 1085 (Fed. Cir. 2005)("The 'written description' requirement must be applied in the context of the particular invention and the state of the knowledge.... As each field evolves, the balance also evolves between what is known and what is added by each inventive contribution."). It is well known to one of skill in the art that the derived primers and probes would have conventional lengths that are useful for the application, e.g., detection via a PCR assay, e.g., 12-100 nucleotides in length.

In view of the amendments to the claims and the remarks presented above, Applicant requests withdrawal of this rejection.

CONCLUSION

Consideration of the claims is respectfully requested, and a notice of allowance is earnestly solicited. If the Examiner has any questions concerning this Response, the Examiner is invited to telephone Applicant's representative at (415) 875-2316.

Respectfully submitted,
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Dated: December 13, 2007

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